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Food Law and Policy Clinic

A Division of the Center for Health Law and Policy Innovation

- Action-learning opportunities for students to **learn** about food law and **serve** policymakers and food advocates by using law and policy solutions to improve food system
- 4 Main Initiatives:
 - Food Policy Councils and Food Systems Planning
 - Food Access & Obesity Prevention
 - Sustainable Food Production
 - **Reducing Food Waste**



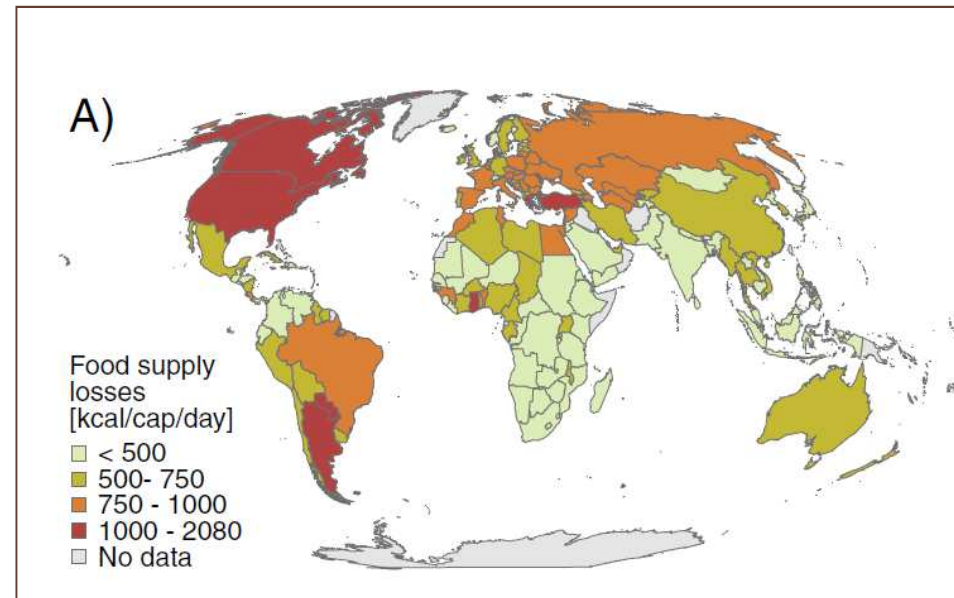
Food Systems: What Role for Lawyers?

- ▶ **Legal education and training:** explain current laws and help clients see opportunities to operate within these laws
- ▶ **Policy change:** work with stakeholders to identify and advocate for better regulation in order to change social norms, improve outcomes, or open new opportunities for innovative ventures
- ▶ **Litigation:** use the court system to change practices of businesses, governments, and individuals



Food Waste

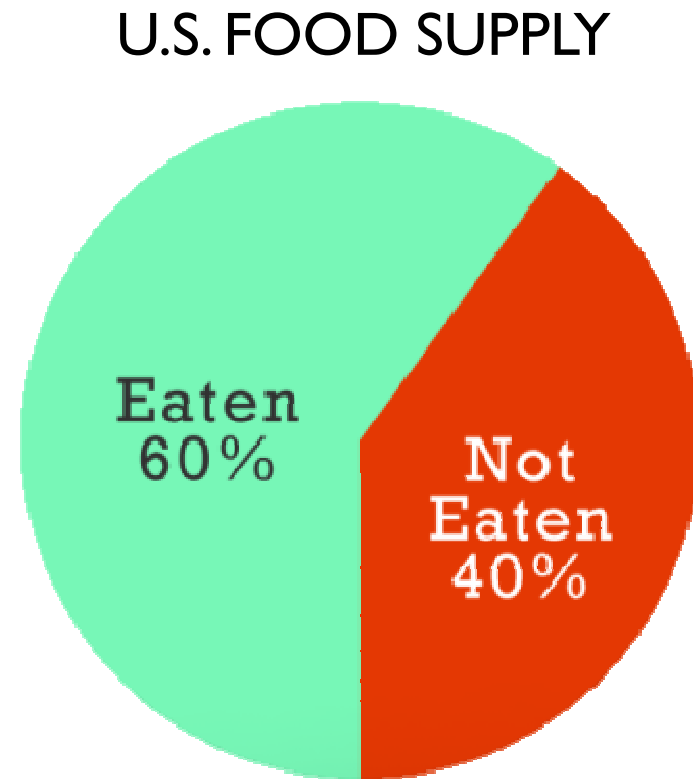
- 1.3 billion tons of food lost or wasted around the world (U.N., 2013)
- 40 percent of food produced for consumption in the U.S. goes uneaten (Gunders, 2012)



Redistributing 30 percent of all the food lost in the U.S. could feed every food insecure American their total diet



Food Waste



~25 % of U.S.
water use



4% of U.S. oil



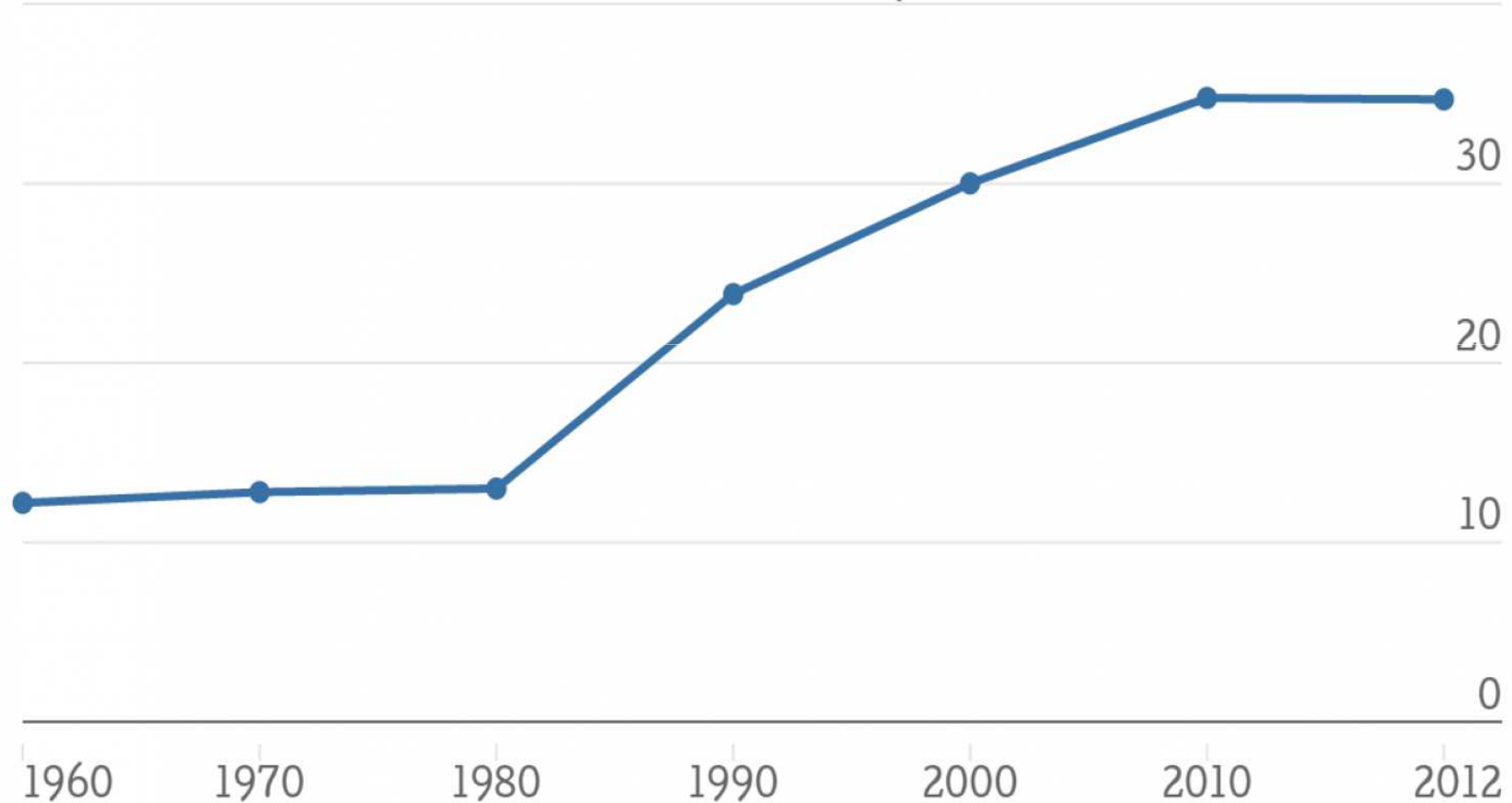
~15% of U.S.
methane

Land use
Pesticide use
Water quality
GHG emissions

Food Waste Trends

How much food Americans throw out each year

40 million of tons

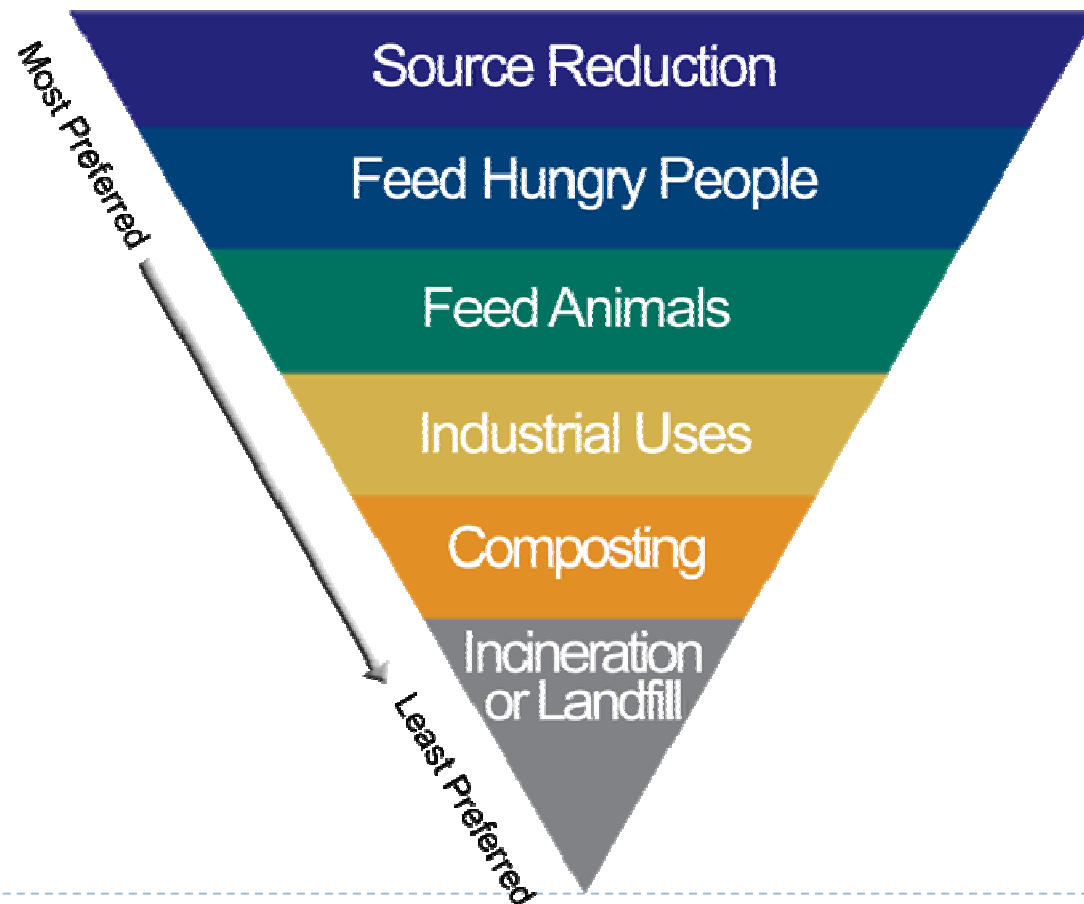


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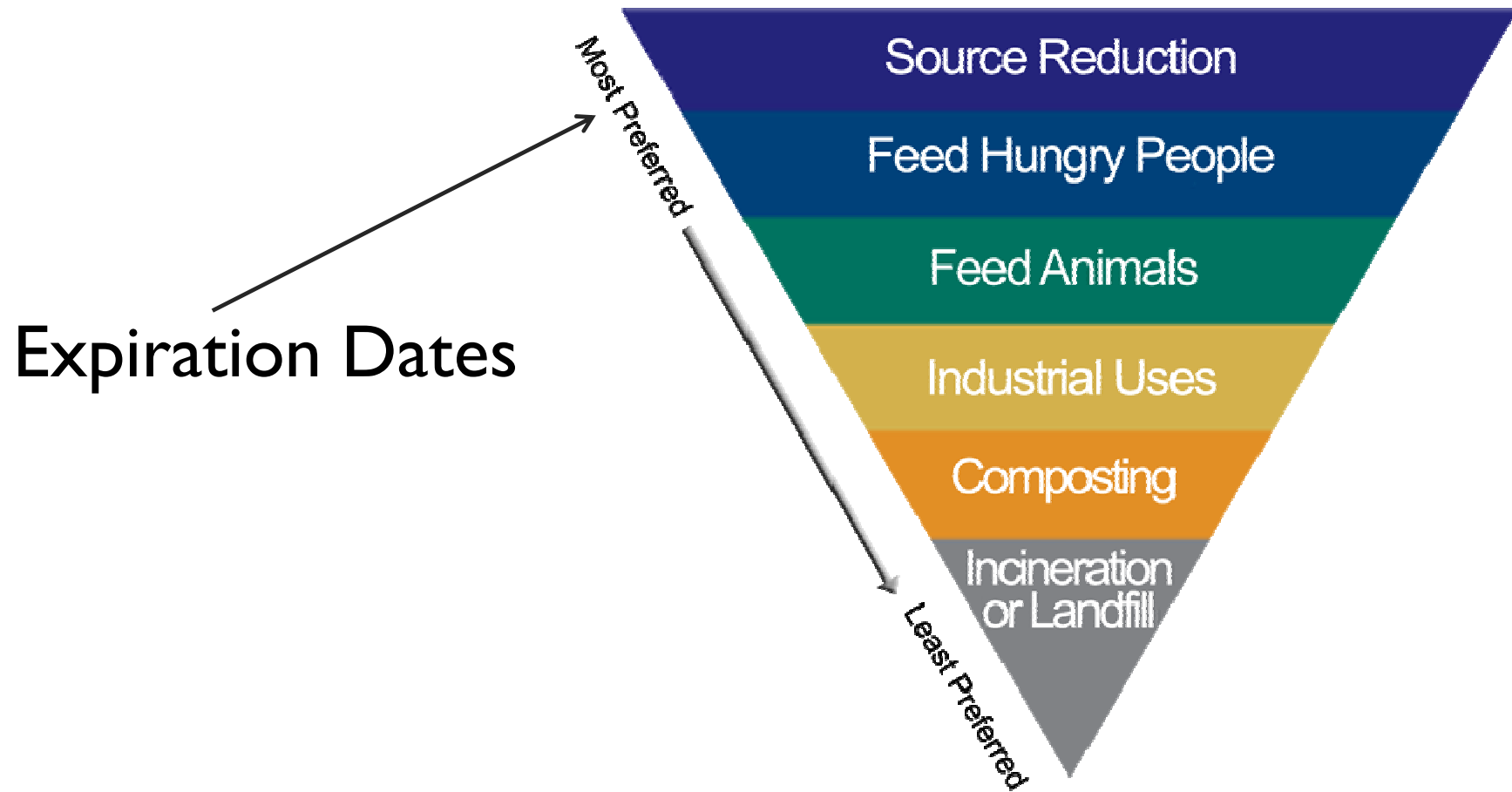
Data: Environmental Protection Agency

Opportunities: EPA's Food Waste Recovery Hierarchy

Food Recovery Hierarchy



Food Recovery Hierarchy



Expiration Dates

Expiration Dates



Every group that has looked at the rising rates of waste, from the U.N. to the NRDC to industry groups, has found confusion over expiration dates to be a leading cause of waste

Report available at:

<http://www.chlpi.org/projects-and-publications/food-library>

Current System - *Federal*

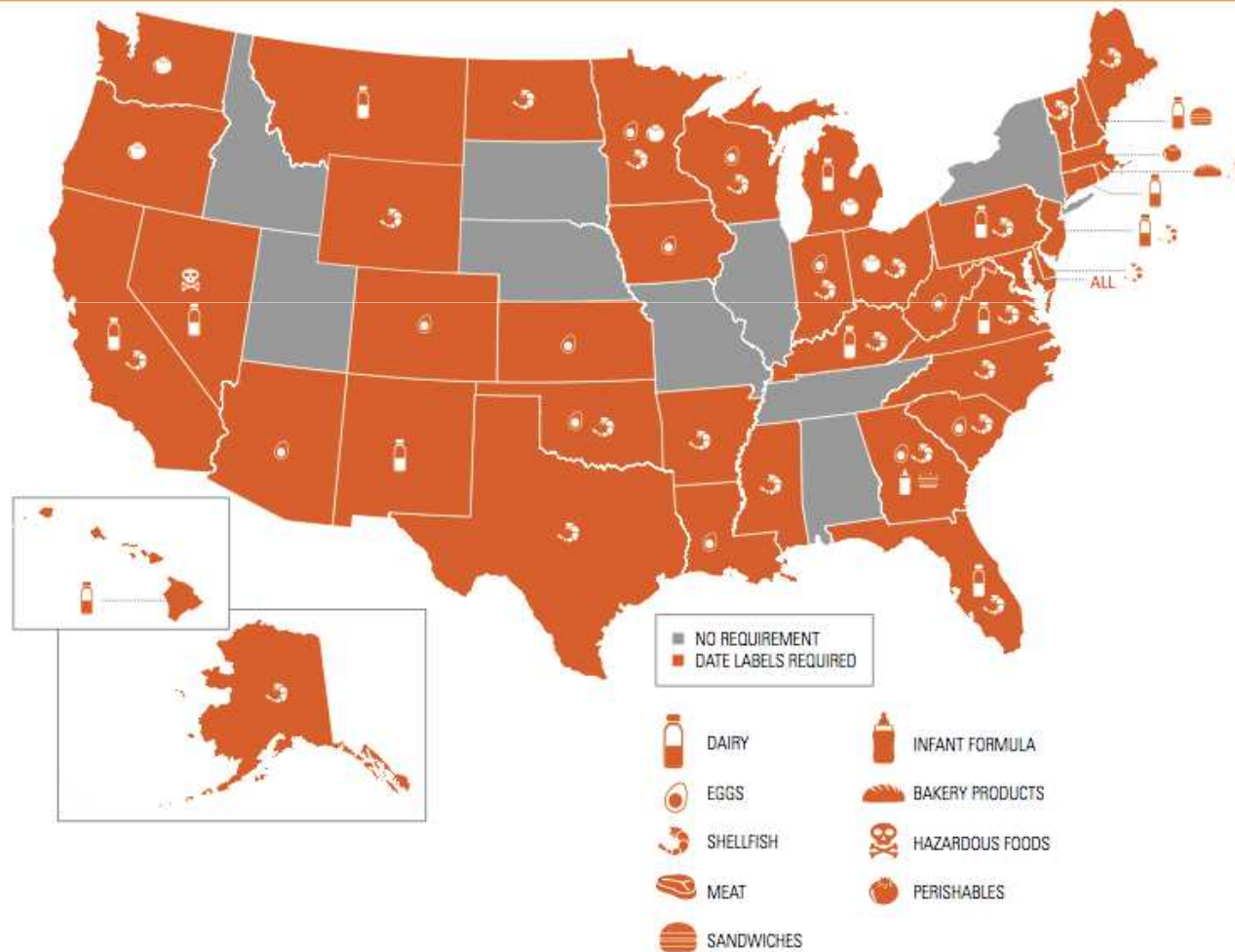
- ▶ **No federal standard exists for expiration dates***
- ▶ Congress attempted in 1970s but no success
- ▶ FDA and USDA can regulate when label is *false or misleading in any particular*
 - ▶ But, FDA has chosen not to regulate because dates are not linked to safety



▶ *With the exception of infant formula

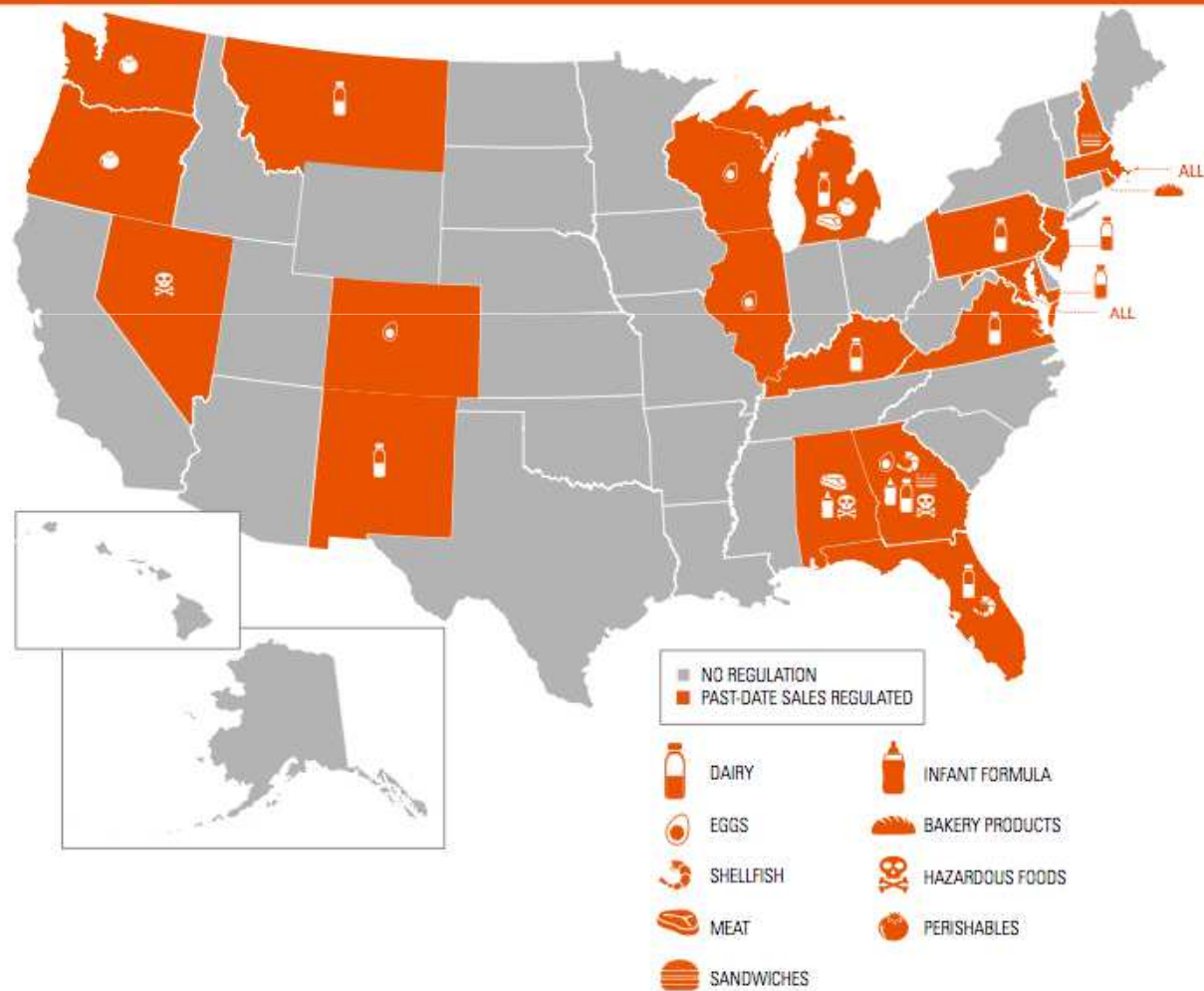
Current System - *State*

Figure 2: States Requiring Date Labels on At Least Some Food Products¹²⁷



Current System - *State*

Figure 3: States Regulating Food Sales Past Some Label Dates^{128, 129}



Findings

- ▶ Expiration dates **undefined in law**; manufacturer suggestions of peak quality

- ▶ **Significant food waste**
 - ▶ **Businesses** → in 2001, \$900 million removed from supply chain due to date code expiration
 - ▶ **Consumers** →
 - ▶ U.S. households waste between \$1,365 – 2,275 per year*
 - ▶ In U.K., 20% of consumer waste due to date label**

* Jonathon Bloom, *American Wasteland*, 2011.

** According to study of British households, WRAP, “Consumer Insight: Date Labels and Storage Guidance,” 2011.

Findings (2)

- ▶ Mistaken belief that past-date food is unsafe to consume

- ▶ **90% of consumers** throw food away past date

- ▶ **BUT, not a single outbreak of foodborne illness linked with consuming past date food**

TABLE 56: CONSUMER ACTIONS TO KEEP FOOD SAFE

Q: Now we have some questions on how you handle or prepare foods. Please indicate how frequently you do each of the following.

Number of shoppers: 1,026	2011				Every Time		
	Never	Occasionally	Fairly Often	Every Time	2010	2009	2008
Wash hands after handling meat	1%	4%	11%	84%	N/A	N/A	N/A
Keep area free of pests and insects	1	4	13	83	79%	80%	81%
Refrigerate promptly (within two hours)	*	4	15	80	78	74	78
Wash hands before handling meat	1	7	17	75	76	77	75
Keep raw meats and poultry separate to avoid cross-contamination	2	7	17	73	56	52	51
Use a store-bought produce or vegetable wash	7	9	11	73	13	8	9
Wash vegetables	1	6	21	72	76	74	76
Use antibacterial soaps	6	19	33	42	46	44	45
Discard food past "use-by" date	5	25	33	37	39	37	44
Thaw meat in the refrigerator	5	22	43	30	31	33	32
Cook to proper temperatures by using a food thermometer	27	22	26	26	33	28	30
Discard food past "sell-by" date	9	31	34	25	32	27	34
Discard food past "best-by" date	9	33	37	22	N/A	N/A	N/A

Findings (3)

- ▶ Mistaken belief that pre-date food is always safe to consume
- ▶ Hot car + trusted date = questionable safety situation
- ▶ Past-date food is generally safe, with the exception of *Listeria* risk in ready-to eat foods



Recommendations

- ▶ Establish a uniform consumer-facing dating system
 - ▶ Standard quality phrase on all products, such as “freshest before”
 - ▶ Separate phrase for safety, such as “expires on”
- ▶ Allow sale and donation of past-date foods
- ▶ Educate and improve awareness of consumers & industry
- ▶ Support new technology like time-temperature indicators



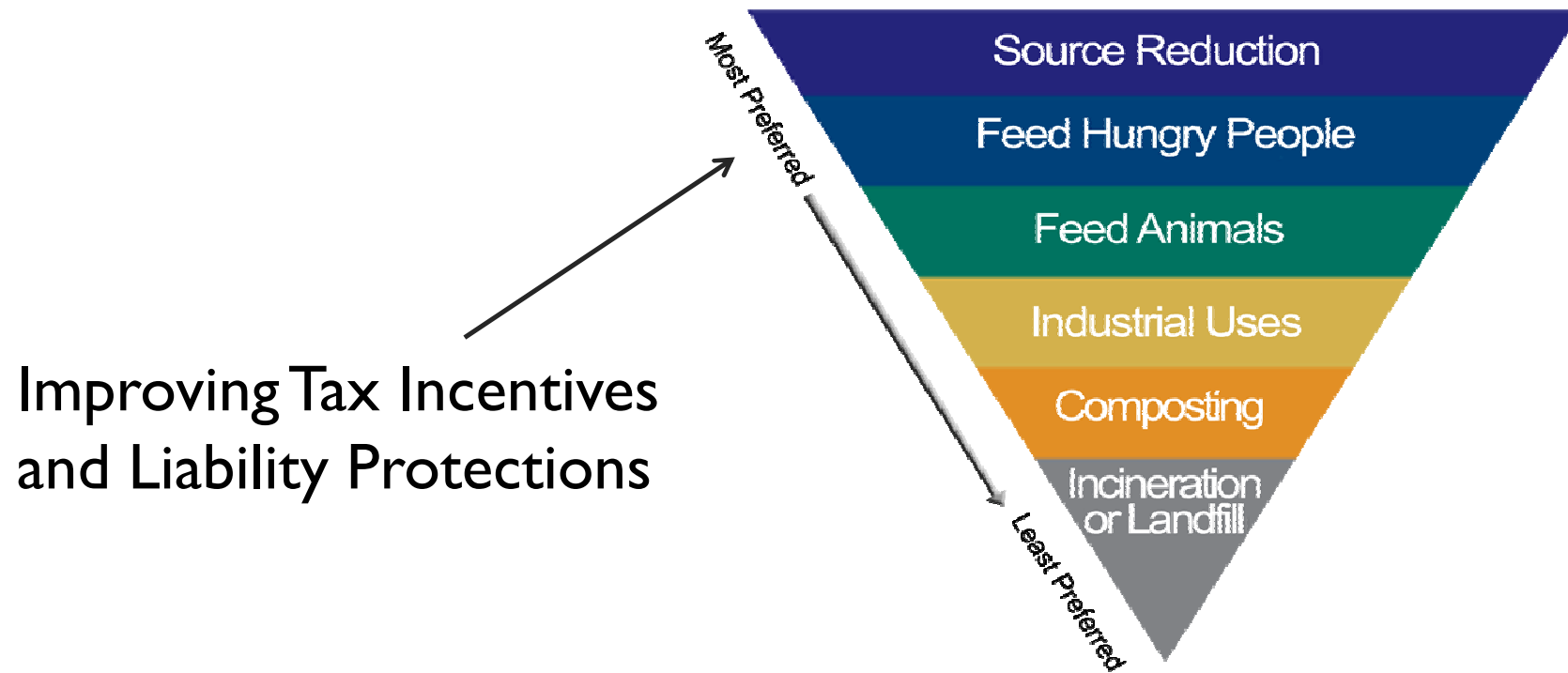
Massachusetts Law

- ▶ All perishable or semi-perishable packaged foods must contain a “sell by” or a “best if used by” date.“
 - ▶ Perishable = shelf life of 60 days or less; semi-perishable = 60-90 days
 - ▶ Meat, poultry, fish, fruits, vegetables unpackaged or in a container permitting sensory examination are exempt
 - ▶ Non-perishable foods may, but are not required to, have label dates
- ▶ Food can only be sold past its date if
 - ▶ (1) it is wholesome and its sensory physical qualities have not significantly diminished;
 - ▶ (2) it is segregated from the food products which are not past date;
 - ▶ (3) it is clearly marked as being past date.
- ▶ 105 Mass. Code Regs. § 520.119



Food Waste: Further Research

Food Recovery Hierarchy



Improving Tax Incentives
and Liability Protections

Food Recovery Barriers

- ▶ Only 10% of food recovered in U.S.
- ▶ Barriers
 - ▶ Uncertainty
 - ▶ Liability/bad publicity concerns
 - ▶ Cost (harvest, packing, transportation, etc.)



Table 9. Barriers to Donating Food

	Manufacturing	Retail and Wholesale
Transportation constraints	63%	42%
Liability concerns	50%	67%
Insufficient storage and refrigeration at food banks	50%	50%
Regulatory constraints	50%	17%
Insufficient on-site storage and refrigeration	38%	33%

Source: BUS. FOR SOC. RESPONSIBILITY, ANALYSIS OF U.S. FOOD WASTE AMONG FOOD MANUFACTURERS, RETAILERS, AND WHOLESALERS 17 (2013), available at http://www.foodwastealliance.org/wp-content/uploads/2013/06/FWRA_BSR_Tier2_FINAL.pdf.

Tax Incentives



- ▶ Federal: I.R.C. 170 § (e)(3)
 - ▶ Federal: shortfalls
 - ▶ Only C-corps are eligible (adversely affects small donors, like farmers)
 - ▶ Hampers innovative food recovery models
 - ▶ Fails to cover ancillary activities
 - ▶ State: very few states (8) have state-level tax incentives
-

Liability Protections

- ▶ **Bill Emerson Good Samaritan Food Donation Act**
 - ▶ No civil or criminal liability from “apparently wholesome food” donated “in good faith” to a nonprofit for distribution to needy individuals
 - ▶ “apparently wholesome” = meets all quality and labeling federal, state, and local laws
- ▶ **Federal: similar shortfalls as tax incentive laws**
 - ▶ Only protects when donating to certain recipient orgs – hampers innovation
 - ▶ Uncertainty and misinformation leads to less food donation
- ▶ **State: most state laws closely match federal floor**



Research and Advocacy Goals

- ▶ Better understand the barriers
- ▶ Increase awareness of current laws and protections
- ▶ Align policies and incentives to offset costs and encourage donation

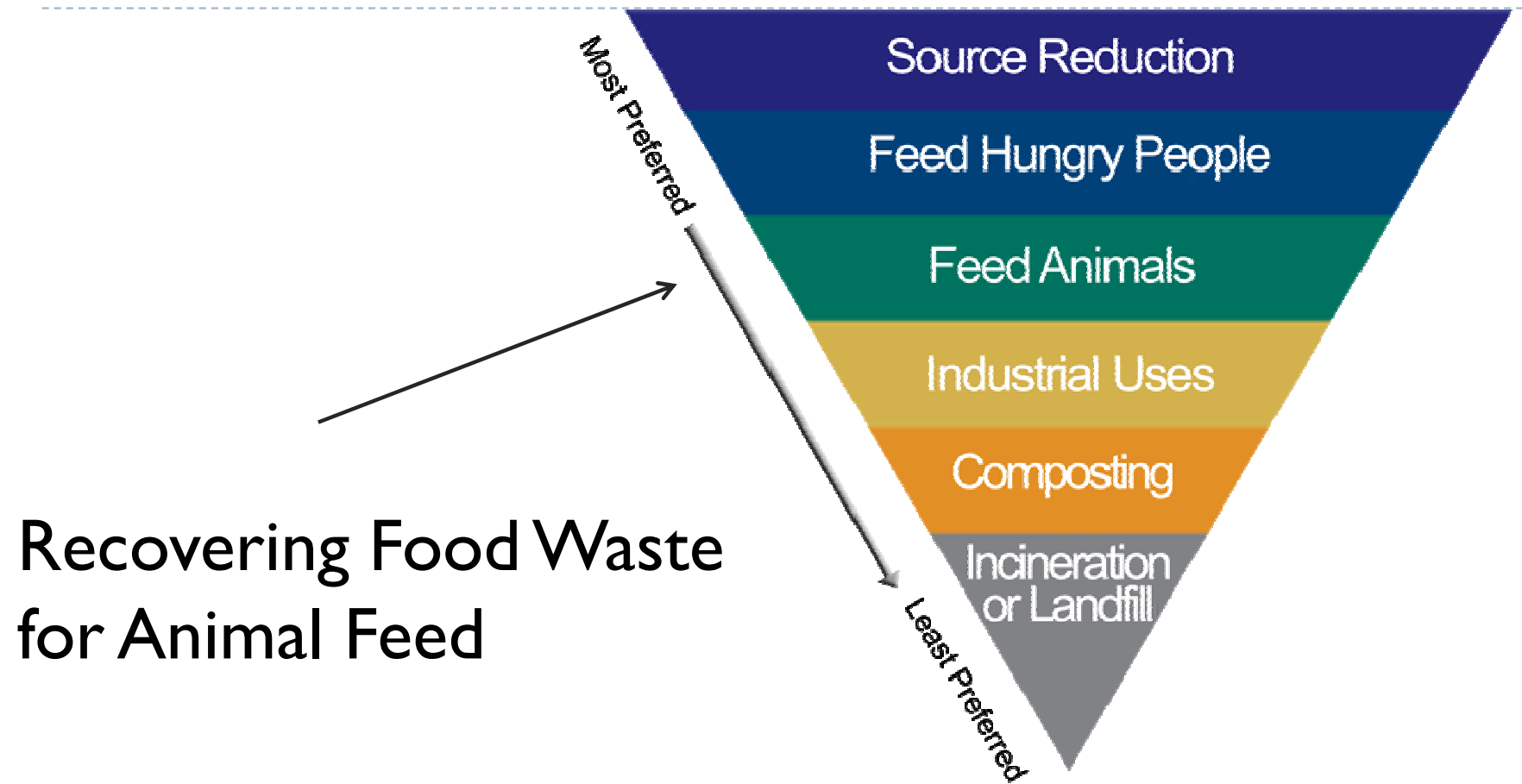


Massachusetts Law

- ▶ Liability protection: “No person who donates food, **including ... food whose date has passed**, to a nonprofit ... without charge **or at a charge sufficient only to cover the cost of handling such food**, shall be liable for civil damages ...”
 - ▶ Mass. Gen. Laws Ch. 94, § 328
- ▶ Tax incentives: no state level incentives



Food Recovery Hierarchy



Food Waste as Animal Feed



- ▶ **Federal**
 - ▶ Food, Drug, and Cosmetic Act covers food additives
 - ▶ Swine Health Protection Act and Mammalian Protein-Ruminant Feed Ban: limit use of meat-based food waste (“garbage”) and create processing requirements
- ▶ **States vary greatly:**
 - ▶ Georgia: Bans feeding animals with waste made of animals or vegetables
 - ▶ New York: Bans feeding animals waste made of animals
 - ▶ Pennsylvania: Allows feeding animals with waste made of animals and vegetables

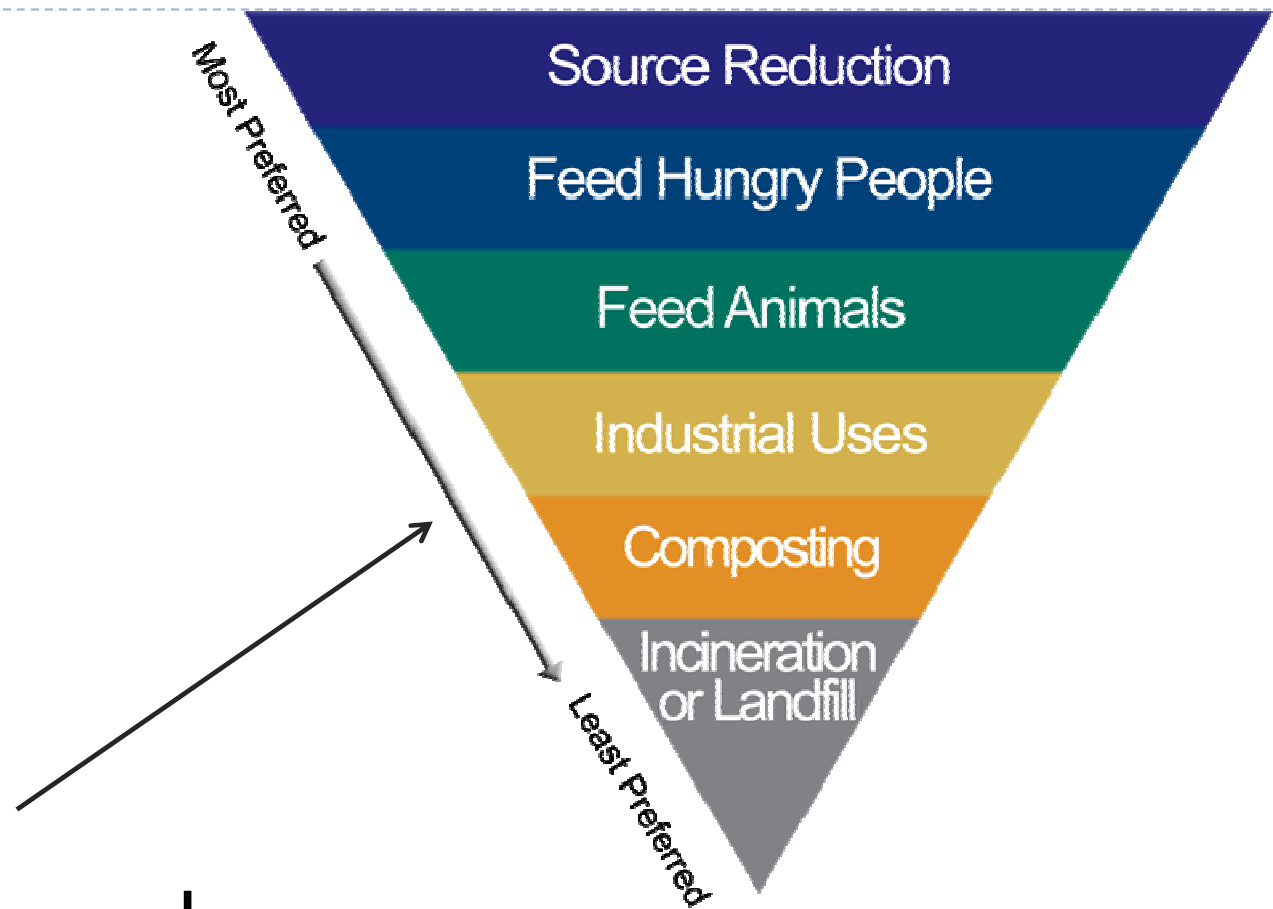


Massachusetts Law

- ▶ Food waste including vegetable and animal waste can be fed to swine, so long as it is compliant with federal regulations and properly licensed
- ▶ But, process for making waste into animal feed is costly
→ need funding!



Food Recovery Hierarchy



Industrial Uses and
Composting of Food Waste



What Role for Massachusetts?

- ▶ Expiration dates – scale down state requirements
- ▶ Tax incentives – create state tax incentive that targets unsupported donors/food recovery organizations
- ▶ Liability protections – strengthen state protections; increase awareness
- ▶ Animal feed – support processing of food waste



Thank you!

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www.chlpi.org/food-law-and-policy

